CRIMINAL LAW

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Among the important developments which emerged in 1967 in the field of criminal law, three deserve special mention. First is the creation by Republic Act No. 4885 of a *prima facie* presumption of deceit in estafa committed through the issuance of bouncing checks. Second is the declaration by the Supreme Court as to which of two conflicting doctrines relating to prescription of crimes is the correct and better one. And third is the clarification of the meaning of Section 2 of the Indeterminate Sentence Law insofar as it excludes from its benefits "persons convicted of offenses punished with death penalty or life imprisonment."

As is the case in other fields, a review of the 1967 decisions of the Supreme Court reveals a trend which augers well for the healthy growth of our jurisprudence. This is the candor with which, in several instances, the present court has reexamined, reversed, modified, reconciled or clarified its former rulings.

CONCEPT OF PENAL LAW

The classification of a law as penal is of central importance in the resolution of issues relating to the application of two fundamental principles: that which proscribes *ex post facto* legislation and that which makes it obligatory to enforce a statute retroactively where such enforcement operates in favor of an accused. This is so because, according to the settled doctrine, these principles may be invoked only as to penal laws.[1]

Strictly speaking, only those laws are penal which impose punishment for offenses against the state which, pursuant to the Constitution, the Executive may pardon. As commonly used, however, penal laws refer to all statutes "which command or

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[1] Republic v. Fernandez, 99 Phil. 934 (1956); Central Azucarera Don Pedro v. Court of Tax Appeals, G.R. Nos. 23236 & 23254, May 31, 1967; Santos v. Secretary of Public Works and Communications, 16949, March 18, 1967; REVISED PENAL CODE, Art. 22; People v. Moran, 44 Phil. 387 (1923); Lorenzo v. Posadas, 64 Phil. 353 (1937); Rilloraza v. Arciaga, G.R. No. 23848, October 31, 1967.

prohibit certain acts, establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission."[2]

Viewed either way, a statute amending the Tax Code by imposing interest on deficiency tax already assessed cannot be treated as a penal law. As held in *Central Azucarera Don Pedro v. Court of Tax Appeals*,[3] the interest is imposed, not as a penalty, but as a compensation to the state for the delay in the payment of the tax. Consequently, such a statute may not be objected to as *ex post facto*.[4]

Similarly, a statute amending the Judiciary Act by limiting the jurisdiction of municipal courts in provincial capitals and of city courts to crimes committed within their respective jurisdictions the penalty for which is not above *prision correccional* or a fine not exceeding ₱6,000.00, or both, cannot be given the character of penal law. Such a law, so it was held in *Rilloraza v. Arciaga*,[5] merely delineates the jurisdiction of the courts. It neither defines crimes nor provide for their penalties. As such, it may not be applied retroactively in favor of an accused.

MOTIVE

It has been the tendency of court rulings and of commentaries to limit the importance of motive to cases where there is doubt as to the identity of the culprit.[6] The case of *People v. Portugueza*,[7] in its formulation of the rule, is no exception. As therein stated: "Motive is relevant where the identity of the person accused of having committed the crime is in dispute, where there are no eyewitnesses, and where suspicion is likely to fall upon a number of persons." Since in that case the defendant was not only duly identified by an eyewitness but also named in the *ante mortem* statement of the victim, his motive in committing the crime was held immaterial.

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[2] Lorenzo v. Posadas, *supra*, note 1.
[3] *Supra*, note 1.
[4] The same ruling was made with respect to Rep. Act No. 2056 (1958), authorizing the demolition of public nuisances in public navigable rivers by orders of the Secretary of Public Works and Communications. Santos v. Secretary of Public Works and Communications, *supra*, see note 1.
[5] *Supra*, note 1.
[6] See *Criminal Law*, 42 PHIL. LAW J. 227,230 (1967).
[7] G.R. No. 22604, July 31, 1967.

There are, however, instances where the determination of motive is not only relevant but indispensable or highly important. In a case, for example, where a killing is claimed to be an ingredient of the crime of rebellion, motive becomes a central issue. The case of *People v. Buco*[8] is a case in point. In that case, the appellant contended that his prosecution for murder placed him in double jeopardy on the ground that the acts charged as murder formed part of the crime of rebellion for which he had previously been convicted. In support of this contention, he sought to prove, among others, that the killing of the victim, Mayor Dizon, was in furtherance of the rebellion. It was found, however, that the mayor was ordered killed not by reason of his office or the functions thereof but because of a private matter which had to do with his being the administrator of his father's land. There can be no doubt, however, that if the appellant had succeeded in proving that the motive behind the killing was as claimed by him, he would have been acquitted of the charge of murder.[9]

Motive could also serve as an important aid in determining the merit of a claim that the crime was done in self-defense. Thus, in determining whether aggression came from the deceased and not from the appellants, the Court, in *People v. Cerna*,[10] took into consideration the fact that the appellant who fired the shots, De la Cerna, had more reason to resent and kill the leader of the alleged aggressors than the latter had against him. As between the two, the Court said, there could only be one source of motive: the land dispute between the assailant's father and the deceased leader. As the deceased was the winning party and appellants were defeated in the land dispute and were actually facing an ejectment suit filed by the deceased, there was less reason for him to entertain evil motives against De la Cerna and his co-appellants than for the latter to do so.

Proof of motive

No specific rule has been devised for determining whether motive is sufficiently established. Motive was held to be ade-

[8] G.R. No. 19831, September 5, 1967.

[9] Killing done on the occasion of or in furtherance of rebellion is absorbed and becomes part and parcel of the crime of rebellion, and cannot be made the subject of a separate and independent prosecution for murder or homicide. People v. Aquino, G.R. No. 13789, June 30, 1960, 57 O.G. 9180 (Dec., 1961); People v. Hernandez, 99 Phil. 515 (1956).

[10] G.R. No. 20911, October 30, 1967.

quately proven where: (1) the accused went looking for the deceased in order to kill him for having stolen his chicken;[11] (2) the deceased accompanied a member of the family with which appellants had bad blood, indicating that appellants felt that the deceased had identified himself with that family;[12] (3) there was a land conflict between the deceased and the accused, and the latter were respondents in an ejectment suit brought by the former;[13] or (4) the accused were promised that they will be given land of their own if they succeeded in attacking the ranch where the victim worked.[14]

CONSPIRACY

Concept

There is a conspiracy, according to the Code, "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."[15]

Agreement as used in this definition is not limited to one expressly or directly made prior to the commission of the crime.[16] It may also be inferred from the circumstances attending the execution of the offense, such as concerted action on the part of the offenders showing that they had the same objective and were united in its accomplishment.[17] Thus, in the case of *People v. Constantino*,[18] although there was no direct proof of conspiracy, its existence was found to be sufficiently established by the following circumstances: that the four appellants chased the deceased with bolos and when they returned two of them were holding bolos tucked at their waists; that they wanted to avenge the death of their kin on the deceased; and that one of them made threats on the victim on the night previous to the killing.

Nor is it necessary that the offenders formed or shared in the same criminal resolution all at the same time. One may be held to have participated in a conspiracy even if he was not present in the meeting where its details were discussed so long

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[11] People v. Labis, G.R. No. 22087, November 15, 1967.
[12] People v. Verzo, G.R. No. 22517, December 26, 1967.
[13] People v. De la Cerna, *supra*, note 10.
[14] People v. Fontanosa, G.R. No. 19421, May 29, 1967.
[15] REVISED PENAL CODE, Art. 8, par. 2.
[16] People v. Ging Sam, 94 Phil. 139 (1953).
[17] People v. Carbonel, 48 Phil. 868 (1926); People v. Datu Dima Binasing, 98 Phil. 902 (1956); People v. Garduque, G.R. No. 10133, July 31, 1958.
[18] G.R. No. 23558, August 10, 1967.

as he was present at the scene of the crime and took active participation during its commission by acts which have a direct connection with the criminal design of the original conspirators.[19]

Effects

Except when entered into with respect to the commission of treason, rebellion, or sedition, conspiracy is not a crime.[20] Where established, however, its effects are far-reaching. For one thing, if entered into for an appreciable time prior to the commission of the crime, it is a conclusive proof of evident premeditation.[21] More importantly, the act of any of the conspirators becomes the act of all the others and responsibility for the act will be borne by them equally regardless of the degree of their respective participation in execution of the act.[22] This does not, of course, mean that the co-conspirators share the same liability for **any** act done by any of them. The act committed must be contemplated in the agreement or, at least, a necessary and logical consequence of the intended crime;[23] otherwise, only those actually committing it would be responsible therefor.[24] For instance, if three conspirators agreed to commit robbery only, but in the execution of the agreement two of them also committed murder, the third can be held liable only for robbery, but not for robbery with homicide.[25]

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[19] People v. De la Cerna, *supra*, note 10. In this case, the following acts of two of the appellants, who were not present during the meeting in which the conspiracy was hatched but were present at the scene of the crime, were considered active participation having a direct connection with the criminal design of those who attended the meeting: (1) carrying a pistol, firing at the victim, and taking part in the stoning of the house to which the wounded victim was brought to rest and be nursed.

[20] REVISED PENAL CODE, Art. 8, first paragraph, in relation to Arts. 115, 136, and 141.

[21] People v. De la Cerna, *supra*, note 10; U.S. v. Cornejo, 28 Phil. 457 (1914); People v. Bangug, 52 Phil. 87 (1928).

[22] People v. Patricio, 79 Phil. 227 (1947); People v. Danan, 83 Phil. 252 (1949); People v. Bersamin, 88 Phil. 292 (1951); People v. Abrina, 102 Phil. 695 (1957).

[23] People v. Hamiana, 89 Phil. 225 (1951); People v. Daligdig, 89 Phil. 598 (1951); People v. Umali, 96 Phil. 185 (1954); People v. Dueñas, G.R. No. 15307, May 30, 1961.

[24] People v. De la Cerna, *supra*, note 10; People v. Pelagio, G.R. No. 16177, May 24, 1967. The one exception to this rule is where the crime committed is robbery in band, in which case all the conspirators are liable for any assault (including those not contemplated in the conspiracy) committed by any of the band's members.

[25] People v. Pelagio, *supra*, note 24. In the De la Cerna case, *supra*, note 10, the accused agreed to kill a certain person only and no one else. In the execution of the conspiracy, however, one of them killed also the son of the intended victim. Only the actual perpetrator was held responsible for the killing of the son.

Effect of desistance

What if an accused participated in the conspiracy but not in the execution of its objective: is he liable? This is an issue which confronted the Supreme Court for the second time in *People v. Pelagio.*[26] The conspiracy in that case was one to commit robbery and involved two meetings. One of the accused, appellant Guico, attended the first meeting but was absent from the second and also from the execution of the robbery itself. Guico's participation in the first meeting consisted in answering one of the participant's questions as to the intended house and its surrounding streets as well as the means of entrance thereto and the channels of exit from the same. Said appellant was acquitted, the Court holding, firstly, that even if his participation in the first meeting sufficed to involve him in the conspiracy, it did not render him criminally liable because conspiracy to commit robbery is not a crime; secondly, that his absence from the second meeting and during the commission of the robbery indicated that he had voluntarily desisted from his commitment to participate in the robbery before it could be executed. Such desistance amounted to an act of repentance which, as earlier held in *People v. Timbol,*[27] freed him from criminal responsibility.

Degree of proof required

Because of its far-reaching consequences, the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy. In other words, it must be shown to exist as clearly and convincingly as the commission of the offense itself[28] in order to uphold the fundamental principle that no one shall be found guilty of crime except upon proof beyond reasonable doubt.[29]

Pursuant to this rule, it has been held that neither joint and simultaneous action nor relationship is *per se* a sufficient indicium of conspiracy; a common design must further be shown to have motivated such action.[30] Much less would successive action on the part of the offenders suffice to establish cons-

[26] *Supra,* note 24.
[27] G.R. Nos. 47473-74, August 4, 1944.
[28] People v. Portugueza, *supra,* note 7.
[29] People v. Tividad, G.R. No. 21469, June 30, 1967.
[30] U.S. v. Magcomot, 13 Phil. 386 (1909); People v. Caballero, 53 Phil. 585 (1929).

piracy, especially where, as in the *Tividad* case,[31] the other accused attacked later in order to help their brother who was grappling with the deceased and, except for the one who inflicted the mortal wound, none of them was armed.

The application of this principle requiring clear and convincing proof of conspiracy is perhaps best exemplified in *People v. Clemente*.[32] In that case, it was an established fact that two of the three appellants joined their brother in chasing the victim and in attacking him when he fell. Clearly, therefore, concerted action was established. But because the prosecution eyewitness could not testify positively that the two succeeded in hitting the victim, the Court held that there was no showing of conspiracy. Apparently, the Court was of the opinion that a common design was not established. For it is entirely possible that the two brothers may have joined the pursuit, not necessarily for the purpose of killing the fleeing man, but just to scare or injure him.

JUSTIFYING CIRCUMSTANCES

1. SELF-DEFENSE

Does a friendly kick on the foot constitute unlawful aggression?

In order that an accused may be absolved from criminal liability on the ground of self-defense, three requisites must concur: first, unlawful aggression; second, reasonable necessity of the means employed to prevent or repel such aggression; and third, lack of sufficient provocation on the part of the accused. The most important of these requisites, the existence of which is presupposed by the other two, is unlawful aggression.[33] It consists in a real or imminent attack clearly manifesting the aggressor's intention to inflict harm.[34] A mere threatening or intimidating attitude, like that of one arising from bed with a knife who asks in a threatening manner what had brought the accused into his house. falls short of the requirement that the attack constitute a real or imminent danger or threat to life or safety.[35] Neither would a slight push or shove, without more,

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[31] *Supra*, note 29

[32] G.R. No. 23463, September 28, 1967.

[33] U.S. v. Carrero, 9 Phil. 544 (1908); People v. Yuman, 61 Phil. 786 (1935).

[34] People v. Alconga, 78 Phil. 366 (1947); U.S. v. Guysayco, 13 Phil. 292 (1909); U.S. v. Santos, 17 Phil. 87 (1910); U.S. v. Banzuela, 31 Phil. 564 (1915).

[35] U.S. v. Guysayco, *supra*, note 34.

be sufficient to constitute unlawful aggression. In the same manner, a "footkick greeting" was held, in *People v. Sabio*,[36] not to constitute an unlawful aggression justifying infliction by the defendant of less serious physical injuries upon a friend by means of a fist blow on the left eye. The reason given by the Court is that such a kick was not "a serious or real attack on a person's safety." At most, it amounted only to a slight provocation.

The Court distinguished the act involved in the *Sabio* case from a slap on the face. It observed that the face represents a person and his dignity, for which reason slapping it would constitute a serious affront to an individual's personality, since such an act places in real danger his dignity, rights and safety. No such affront can be found in a friendly kick on the foot.

Self-defense where the charge is direct assault or resistance to a person in authority or his agent

The case of *U.S. v. Alvear*[37] enunciated the rule which extends the benefit of self-defense to one who assaults or resists a police officer under circumstances which would justify such an act if the person assaulted were not a police officer lawfully performing his duties, provided that the person assaulting or resisting did not know, and had no reasonable ground to believe, that the person assaulted or resisted was a police officer acting in the performance of his duties as such.

Something similar to the situation which gave birth to this rule happened in *Vytiaco v. Court of Appeals*.[38] In this case, the appellant was collared and grabbed by one Jagmis who resented a joke made by him. Separated from Jagmis by Gopilango, appellant was preparing to defend himself should the former charge again when he saw his brother-in-law coming with a rifle and a pistol, apparently to help him. Appellant ran out and told his brother-in-law to go home. He was then followed by Jagmis and Gopilango. Gopilango, unknown to appellant to be a Constabulary soldier, drew his pistol and demanded the surrender of the firearms. Appellant turned around and grabbed Gopilango's pistol. Having wrested the latter's pistol, he drew his own revolver given to him by his brother-in-law

[36] G.R. No. 23734, April 27, 1967.
[37] 35 Phil. 626 (1916).
[38] G.R. No.s 20246-48, April 24, 1967.

and pointed it at his pursuers, warning them, as he retreated, not to get nearer or else he would shoot. Gopilango then identified himself and asked appellant to return his gun, but the latter did not do so.

For these acts, appellant was charged with direct assault upon an agent of a person in authority and grave threats. Convicted of both charges, he appealed to the Court of Appeals. The Court of Appeals absolved him of both charges but found him guilty of the less serious crime of resistance and serious disobedience to an agent of a person in authority because of his refusal to return the gun of Gopilango even after the latter had identified himself as a Constabulary man. The Supreme Court affirmed the dismissal by the Court of Appeals of the charges of direct assault and grave threats and agreed with the latter court's finding that the acts charged as such were made by appellant in self-defense with the intention of preventing his pursuers from getting nearer to him, he being at the time under the apprehension that if they did so they might do violence to his person. The highest court, however, did not approve of the Court of Appeals' conclusion that appellant's refusal to return Gopilango's gun after the Constabulary soldier had made known his identity constituted resistance and serious disobedience to an agent of a person in authority. Such refusal, the Court said, was part of the series of acts he did for his self-protection. The fact that Gopilango identified himself verbally was not sufficient to assure appellant that he was really a peace officer and that he was then performing his duties. Gopilango was then in civilian clothes, he joined Jagmis in pursuing appellant, and at the start of the incident he did not identify himself as a peace officer. Under these circumstances, appellant had reason to suspect that Gopilango was helping Jagmis.

Nature and location of wounds belie claim of self-defense.

The determination of the merit of a claim of self-defense is often been based on the nature and location of the wounds inflicted by the defendant. This is so because such physical facts show more truthfully than words the manner in which the crime was committed.

In the case of *People v. Cerna*,[39] the appellant Cerna claimed that one of the victims (Rafael) came with companions to his

[39] *Supra*, note 10.

house and demanded of him (Cerna) to go down for a confrontation. When said appellant refused, Rafael and his companions surrounded his house, thrust their bolos through it and set it on fire. Fearing he would get killed, he got his carbine and fired frontally at the attackers from his house. The Court rejected this theory of said appellant on the basis of evidence that the two victims who succumbed to his gunshots each suffered a bullet wound directly at the back. The Court further noted that the wound of entry of one of the victims is lower than his wound of exit, thus indicating that the bullet's path was upwards and not downwards. This fact disproved Cerna's contention that he fired at the victims while he was up in his house.

The nature and location of the wounds was also relied upon in *People v. Labis*[40] to overrule the accused's claim that he was in front of the victim when he inflicted the bolo wounds. Considering that the bolo wounds had a right-to-left direction, they could not have been inflicted frontally by the accused, it being an admitted fact that he is right-handed.

2. DEFENSE OF RELATIVE

One who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanquinity within the fourth civil degree does not incur any criminal liability, the first two requisites of self-defense — unlawful aggression and reasonable necessity of the means employed to prevent or repel such aggression — being present in addition to the further requirement that, in case the provocation came from the person attacked, the defender had no part therein.[41]

This provision was applied in *Ramos v. People*.[42] One of the accused, Conrado, saw one Salvio throwing a stone at his brother, Gregorio, upon seeing which he (Conrado) also threw a stone at Salvio. Conrado's act was considered by the Court as an innocent one done in defense of a relative, i.e., to protect his brother.

[40] *Supra*, note 11.
[41] REVISED PENAL CODE, Art. 11 (2).
[42] G.R. No. 22348, August 23, 1967.

MITIGATING CIRCUMSTANCES

1. PASSION AND OBFUSCATION AND IMMEDIATE VINDICATION OF A GRAVE OFFENSE.

In *People v. Constantino,*[43] the appellants' claim to having acted "upon an impulse so powerful as naturally to have produced passion and obfuscation" and in proximate vindication of a grave offense was rejected because the killing of the victim, purportedly to avenge the stabbing of appellants' kin, took place four days after the said stabbing. It is a requisite of both these circumstances that the act giving rise to the obfuscation or for which vindication is made must not be separated from the commission of the crime by the lapse of a considerable length of time.[44] Furthermore, in the case of proximate vindication of a grave offense, it is required that the act of vindication be motivated by lawful sentiments. In the *Constantino* case, the Court expressed doubt whether vengeance can be considered as such.

2. VOLUNTARY SURRENDER

This circumstance will be appreciated in favor of an offender if the surrender is of his own free will and is such as to indicate his intention of unconditionally submitting himself to the disposal of the authorities.[45] The appellants in *People v. Labis*[46] were given the benefit of this circumstance because, instead of running away when the policemen arrived at the scene of the crime, they voluntarily surrendered themselves to them together with the bolo used in the commission of the crime.

3. PLEA OF GUILTY

The rule is settled that in order that a plea of guilty may be taken into account as mitigating, it must be made before the prosecution starts presenting evidence. As the appellant's plea of guilty in *People v. Halasan*[47] and in *People v. Buco*[48] was entered only after the prosecution had began adducing evidence, it was not considered mitigating.

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[43] *Supra,* note 18.
[44] AQUINO, REVISED PENAL CODE 241, 243 (1961), citing cases.
[45] People v. Sakam, 61 Phil. 27 (1934); People v. Honrada, 62 Phil. 112 (1935).
[46] *Supra,* note 11.
[47] G.R. No. 21495, July 21, 1967.
[48] *Supra,* note 8.

4. SIMILAR AND ANALOGOUS CIRCUMSTANCES.

Limited education and unenlightened environment

In the consolidated cases of *People v. Santos,*[49] *People v. Bocto,*[50] and *People v. Santos,*[51] the Supreme Court could not master the necessary number of votes to impose the death penalty on appellant Catalino Santos, even if it affirmed the meting out of such penalty to his co-accused. The considerations which led the Court to deal less severely with said appellant were his limited schooling (which did not extend beyond the elementary grades), the effect upon his general outlook of the unenlightened environment in which he lived (a community of Ilongos), and the fact that the victim, who cleared and worked on the land claimed by the Ilongos, was looked upon in that community as an oppressor. All of these circumstances, in the Court's view, influenced appellant Santos to commit the offense in order "to forestall x x x a usurpation of rights he felt bound to defend."

AGGRAVATING CIRCUMSTANCES

1. CONTEMPT OR INSULT TO PUBLIC AUTHORITIES

The fact that a policeman was present at the scene of the crime does not aggravate the crime as one committed in contempt of or with insult to the public authorities. The reason is that a policeman is not a person in authority but merely an agent of a person in authority.[52]

2. RECIDIVISM

This circumstance was appreciated against one of the appellants in *People v. Pelagio,*[53] a case involving robbery with homicide, because at the time of the trial he had been previously convicted of robbery.

3. EVIDENT PREMEDITATION

A crime is aggravated by evident premeditation if it was deliberately planned and the perpetrator had persistently and tenaciously clung to his plan despite sufficient time or ample

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[49] G.R. No. 17215, February 28, 1967.
[50] G.R. No. 17216, February 28, 1967.
[51] G.R. No. 17217, February 28, 1967.
[52] People v. Verzo, *supra,* note 12, citing People v. Siojo, 61 Phil. 307, 317 (1935).
[53] *Supra,* note 24.

opportunity for reflection and meditation to enable him to reconsider and overcome is determination, if he had so desired.[54]

Proof that there was a direct or express conspiracy one day prior to the commission of the offense has been held to be sufficient to establish this circumstance.[55] It may also be shown, as in the *Cerna* case,[56] by proof that one of the appellants told his companions to get ready since the one they were waiting for was already there; that said appellant ordered his companions to burn the victim's house so they would have an excuse; that appellants pursued the victim to another house and ordered the women there to leave lest they be killed also; and after one of the appellants had already shot at the victim, their leader still fired a third shot, which finally killed the victim. All these acts, the Court held, showed appellants' determination to kill the victim.

In *Ramos v. People*,[57] the existence of a criminal plan was inferred from the exclamation of one of the accused that his companions should keep quiet lest "we might be heard that we have intentions." As basis for its finding that the accused had sufficient time to reflect and deliberate on their plan, the Court took account of the distance of the barrio where the killing was committed from the **poblacion** where the accused came from.

4. ABUSE OF SUPERIOR STRENGTH

The offense was held to be qualified or aggravated by this circumstance where:

1. The deceased who was alone was unarmed and trying to flee while the offenders were three and armed with bolos;[58]

2. The appellant was a man and he used a knife in kidnapping and then killing an unarmed defenseless woman.[59]

5. TREACHERY

The essence of this aggravating circumstance is that the offender perpetrates the crime by adopting a means or method

[54] People v. Gonzales, 76 Phil. 473 (1946); People v. Carillo, 77 Phil. 572 (1946); People v. Custodio, 97 Phil. 698 (1955); People v. Mendova, 100 Phil. 811 (1957).

[55] People v. De la Cerna, *supra*, note 10; citing U.S. v. Cornejo, 28 Phil. 457 (1914) and People v. Bangug, 52 Phil. 87 (1928).

[56] *Supra*, note 10.

[57] *Supra*, note 42.

[58] People v. Verzo, *supra*, note 12.

[59] People v. Reyes, G.R. No. 21445, May 20, 1967.

which would insure his safety from any defense or retaliation that the offended party might make. Otherwise put, the crime is committed in such a manner that the offended party is not given an opportunity to defend himself.[60]

When found present

Accordingly, it was found to have attended the commission of the crime where one of the accused struck the deceased from behind with a bolo while he was being held firmly by the other accused so that he could not move or turn around;[61] the victim was shot from a half-opened window a few inches from his back while he and his family were seated around a table taking their dinner;[62] the deceased was shot while he had his hands up either in fear, to show that he would not fight, or to ward off the shots;[63] the victim was shot for the second and third time while he was lying flat on the floor suffering from the wound inflicted by the first shot;[64] or the victim was attacked from behind as indicated by the nature and location of his wounds.[65]

Suddenness of attack not conclusive

The suddenness with which the attack was made is a factor often considered in characterizing the means or manner of execution of a crime as treacherous even where the attack is made frontally.[66] Standing alone, however, this factor is not deemed conclusive proof of the attendance of treachery.[67] The attack may be sudden but if there is a showing that the victim was not completely denied an opportunity to prepare and repel or avoid the attack or to retreat,[68] it would be erroneous to make a finding that the offense was committed in a treacherous manner.

This rule is well illustrated in *Ramos v. People*.[69] In this case, the appellant Ramos, after having advanced to about 6 meters from the offended party, Rufino, who was with several

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[60] REVISED PENAL CODE, Art. 14, paragraph 16, People v. Casalme, G.R. No. 18033, July 26, 1966; Bernabe v. Bolinas, G.R. No. 22000, November 29, 1966.

[61] People v. Labis, *supra*, note 11.

[62] People v. Bato, G.R. No. 23405, December 29, 1967.

[63] People v. Castro, G.R. Nos. 20555 & 21449, June 30, 1967.

[64] People v. De la Cerna, *supra*, note 10.

[65] People v. Comigjod, G.R. No. 23113, May 30, 1967.

[66] People v. Noble, 77 Phil. 93 (1946); People v. Felipe, G.R. No. 4619, February 25, 1952; U.S. v. Cornejo, *supra*, note 55.

[67] Perez v. Court of Appeals, G.R. No. 13719, March 31, 1965.

[68] People v. Pengzon; 44 Phil. 224 (1922); People v. Sagayano, G.R. Nos. 15961-62, October 31, 1963; People v. Glore, 87 Phil. 739 (1950).

[69] *Supra*, note 42.

companions, rolled up his trousers and took out his knife. Thereupon, he told Rufino, "Pinong, *celebracion ta na,*" and at the same time or almost immediately thereafter charged at him. Taken by surprise and unarmed, Rufino fled, chased by Ramos. While thus fleeing, Rufino slipped and fell down, with his face up, and in that position was stabbed thrice by Ramos. Upon these facts, the trial court and the Court of Appeals concluded that there was treachery because, though frontal, the attack was sudden. The Supreme Court found otherwise, stating that, though the victim was taken by surprise and did not anticipate any attack at the moment the challenge was made, he was not without a chance to meet or evade the assault. First, the distance of 6 meters between him and his assailant as well as the challenge made it possible for him to run away and would probably have escaped harm had he not slipped and fallen down. For another thing, his position after he fell place it within his power to parry and protect himself from the assailant's thrusts with his free hands and thus render the attack less easy.

Treacherous manner or means must be deliberately employed

But even a showing that the offense was committed without any right or danger to the perpetrators will not complete the conditions which would warrant the aggravation of the offense by treachery. There must likewise be conclusive proof that the particular manner, form or means of accomplishing the wrongful act was consciously sought or intended by the offenders to insure its execution as well as their safety.[70] In consonance with this rule, treachery was ruled out where the attack arose from a chance encounter and quarrel and the victim's being stabbed while prostrate on the ground was merely incidental to the ensuing pursuit.[71]

Rules when commission of crime starts without treachery but is consummated treacherously

The requirement that the treacherous means must be deliberately chosen or availed of is at the basis of the two rules obtain-

[70] People v. Dadis, G.R. No. 21270, November 22, 1966; People v. Tumaob, 83 Phil. 738 (1949).

[71] People v. Clemente, *supra,* note 32. "In every fight it is to be presumed that each contending party will take advantage of any purely accidental development that may give him an advantage over his opponent in the course of the contest." People v. Cañete, 44 Phil. 478, 480 (1923).

ing when the execution of the crime is commenced without treachery but is consummated treacherously. The first of these rules is to the effect that where the attack is continuous and unbroken, in the sense that the acts constituting it were all done and followed one another in rapid succession, treachery cannot be deemed to aggravate or qualify a crime if its inception is not attended by the employment of treacherous means or methods, even if means or methods of such character were employed at or before its termination. In such a case, it is not permissible to break up the attack into two or more parts and make each part constitute a separate, distinct, and independent attack in order to permit the injection of treachery.[72]

The reverse holds true where the aggression is not of a continuous character, either because between its beginning and its termination a material change took place in the conditions or circumstances attending it[73] or because an appreciable period of time separated the fatal act in which it culminates from the act or series of acts initiating it.[74] In such case, the rule is that treachery will be deemed present even if it did not exist at the beginning of the attack, if at the time the fatal injuries were inflicted the offended party was unable to defend himself.[75] This rule was applied in *People v. Cerna* [76] to meet the argument of one of the appellants that treachery could not be taken into account because the first shot was not treacherous, having been preceded by a warning from the victim's son. In ruling that treachery attended the killing, the Court said that, even assuming that the first shot was not treacherous, the second shot was definitely fired with treachery, the victim being then wounded and helpless. According to the Court, an independent appreciation of the treachery attending the second shot must be made because a sufficient lapse of time separated the first from the second shot. During that intervening time, the victim was brought to a house 100 meters away after being hit by the first shot; his wounds were washed and then he was brought to a third room to rest after which the accused arrived and ordered the

[72] U.S. v. Balagtas, 19 Phil. 164 (1911); People v. Durante, 53 Phil. 363 (1929).

[73] People v. Cañete, *supra*, note 71.

[74] People v. Peje, G.R. No. 8245, July 19, 1956.

[75] U.S. v. Elicanal, 35 Phil. 209 (1916); U.S. v. Baluyot, 40 Phil. 385 (1919); People v. Mobe, 81 Phil. 58 (1948); People v. Somera, 83 Phil. 548 (1949).

[76] *Supra*, note 10.

two women therein to get out; and it was only after the women had left that another appellant climbed up the kitchen and fired the second shot.

PERSONS CRIMINALLY LIABLE

1. PRINCIPALS

The principals in a crime become liable as such in any of three ways: (1) by direct participation; (2) by inducement; or (3) by indispensable cooperation.[77]

Direct participation

One is a principal by direct participation if he has an immediate participation in the criminal design, proceeds with the others to carry it out and personally performs acts to that end.[78] An accused will be held liable as such even if he has not himself inflicted an injury materially contributing to the death of the victim,[79] as when he participates as a direct conspirator or by acts showing that he was aware of the criminal purpose of his co-accused and that his presence at the scene of the crime was not merely passive. The participation of the appellant Libumfacil in *People v. Cerna*[80] was considered that of a principal because, although he was not present when the conspiracy to kill the deceased was hatched, he was with the other accused when the conspiracy was carried out, he was armed, he had also fired at the victim, and he took part in stoning the house to which the victim was brought after the first shot.

Indispensable cooperation

A principal by indispensable participation is one who "cooperates in the commission of the offense by another act without which it would not have been accomplished."[81] In *People v. Labis*,[82] the deceased was being pursued by his assailant when a certain Cabiles seized and held him so that he could not move or turn around. This enabled his pursuer to overtake and stab him fatally at the back. Cabiles was held liable as a principal by indispensable cooperation because if he did not seize and hold the victim, the offense would not have been accomplished.

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77 REVISED PENAL CODE, Art. 17.
78 People v. Ong Chiat Lay, 60 Phil. 788 (1934).
79 People v. Tamayo, 44 Phil. 38 (1922).
80 *Supra*, note 10.
81 REVISED PENAL CODE, Art. 17.
82 *Supra*, note 11.

2. ACCOMPLICE

An accomplice is one who, not being a conspirator and not having performed acts attributable to principals, cooperates in the execution of the offense by previous or simultaneous acts.[83] Two of the appellants in *People v. Clemente*[84] were convicted merely as accomplices because, although they joined their brother in the pursuit and then in the attack, it was neither proved that they did so pursuant to a conspiracy nor that they managed to hit the victim.

For one to be held as an accomplice, however, it is necessary that he be possessed with knowledge of the criminal intent of the principal and that his acts are intended to afford material or moral aid in the execution of the crime.[85] Neither of these requisites were found to exist with respect to appellant Conrado Ramos in *Ramos v. People*.[86] Firstly, the circumstances were such that he could not have known of the plan of his co-accused to harm the victim. Secondly, he was not present at the scene of the stabbing. And, thirdly, he stoned not the victim but a companion of the latter.

3. ACCESSORY

Knowledge of the criminal design of the principal in a crime is also necessary for the conviction of one charged as an accessory. Appellant Conrado Ramos in the case just mentioned could not likewise be held guilty as an accessory because it was not proven that he was aware of the stabbing when he threw a stone at the deceased's companion, who was stoning his brother. Besides, his purpose in doing so was not to help his brother escape, but to protect him.

PENALTIES

Imposition of death penalty

Article 47 of the Revised Penal Code excepts from the imposition of the death penalty guilty persons who are over 70 years old. This provision was applied in *People v. Alcantara*[87]

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[83] REVISED PENAL CODE, Article 18 in relation to Art. 8.
[84] *Supra*, note 32.
[85] People v. Tamayo, *supra*, note 79.
[86] *Supra*, note 42.
[87] People v. Alcantara, G.R. No. 16832, November 18, 1967.

where one of the accused was only 64 years old when he was convicted by the lower court but was already over 70 when his appeal was decided by the Supreme Court. In view of this fact, the Court deemed it academic to review the aggravating and mitigating circumstances for the purpose of determining whether life imprisonment or death should be imposed.

The Indeterminate Sentence Law

The Indeterminate Sentence Law excludes from its benefits "persons convicted of offenses punished with death penalty or life imprisonment."[88] As demonstrated in the previous year's survey there has been some inconsistency in the Supreme Court's application of this provision. In at least one case, decided in 1958, the Court refused to extend the benefits of the law to a minor sentence to a penalty less than life imprisonment simply because he was convicted of murder, for which the law prescribes the penalty of *reclusion temporal* maximum to death.[89] Yet in a previous case,[90] the Court gave the benefit of an indeterminate sentence to a minor committing the same crime, based on the penalty actually imposed which was less than life imprisonment. In two 1966 cases[91] and in the 1967 case of *People v. Castro,*[92] the Court used the same basis for the application of the law. But in none of these cases did the Court make an explicit interpretation of the said provision of the Indeterminate Sentence Law. However, any doubt as to the proper interpretation of the provision has been removed in *People v. Labis.*[93] In this last case, the Court expressly noted that the phrase *"punished* with death penalty or life imprisonment" refers to the penalty imposed after considering all aggravating and mitigating circumstances. It therefore granted the accused an indeterminate sentence even if he was convicted of murder, because the resulting penalty, after taking into account the unoffset mitigating circumstance of voluntary surrender, was only *reclusion temporal* maximum.

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[88] Act No. 4103 (1933), Sec. 2, as amended.
[89] People v. Colman, 103 Phil. 6 (1958).
[90] People v. Roque, 90 Phil. 142 (1951).
[91] People v. Pedro, G.R. No. 18997, January 31, 1966; People v. Genilla, G.R. No. 23681, September 3, 1966.
[92] *Supra,* note 63.
[93] *Supra,* note 11.

COMPLEX CRIMES

Light offense may be complexed with concurrent grave or less grave offenses

Under Article 48 of the Revised Penal Code, a single act resulting in two or more grave or less grave offenses gives rise to a complex crime. Accidents resulting in multiple injuries or damages to property frequently call for the application of this provision. One question that often presents itself in such situations is: Suppose one of the crimes simultaneously resulting from an accident constitutes only a light offense, say slight physical injuries, may it be complexed with the more serious ones which may be qualified as either grave or less grave?

The language and history of the article both give a negative answer. Prior to its amendment, Article 48 spoke only of "two or more *crimes*" without any distinction as to gravity. But under its present terms, as amended by Commonwealth Act 4000, an offense, to be complexed with others arising from the same act, must be either *grave* or *less grave*. This change clearly shows the intention of the legislature to exclude light offenses from becoming ingredients of a complex crime. This was the view adhered to by the Supreme Court in the cases of *People v. Turla*,[94] *People v. Benitez*,[95] and *People v. Linatoc*.[96]

Since the case of *People v. Belga*,[97] the Court has adopted a contrary rule. Under the doctrine enunciated in that case and in those following it, including the 1967 case of *People v. Lizardo*,[98] a defendant cannot be subjected to various prosecutions by splitting an act into various charges. A criminal prosecution for slight physical injuries, therefore, cannot be made separately from other graver crimes resulting from the same act. This ruling has been justified on the grounds (1) that the purpose of Article 48 is to favor the accused by prescribing only one penalty, the penalty for the gravest offense in its maximum period, instead of a penalty for each of the offenses which, added together, may be graver than the maximum penalty for the gravest offense; and (2) that a contrary rule would work

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[94] 50 Phil. 1001 (1927).
[95] 73 Phil. 671 (1942).
[96] 74 Phil. 586 (1944).
[97] 100 Phil. 996 (1957).
[98] G.R. No. 22471, December 11, 1967.

not only inconvenience in the administration of justice and make for a repetitious procedure.[99]

The difficulty with this latter view is that it is not always true that the totality of the penalties for each of the offenses arising from one act of imprudence would be graver than the maximum penalty for the gravest offense. An example may be given. Suppose through reckless imprudence A kills B and inflicts slight physical injuries on C and D. If A's imprudent act were considered a complex crime of homicide through reckless imprudence with multiple slight physical injuries through reckless imprudence, A would suffer the penalty of *prision correccional* in its medium period, the maximum of the penalty provided in Art. 365. This would be a period of 2 years 4 months and 1 day to 4 years and two months. But if the resulting crimes were treated separately, and not complexed together, barring any aggravating or mitigating circumstance, A would suffer for the homicide through reckless imprudence only the penalty of *prision correccional* in its minimum period (or 6 months 1 day to 2 years and 4 months) in accordance with paragraph 1 of Art. 64. For each of the two slight physical injuries through reckless imprudence, he would suffer the penalty of *arresto menor* in its medium, or a period of 11 days to 20 days. The penalties for the three crimes added together would constitute a maximum imprisonment of only 2 years 4 months and 40 days or almost two years shorter than the maximum of the penalty to be imposed if the three were complexed. This situation proves that Art. 48 is more than just a rule of procedure for the prosecution of crimes; it is a substantive law affecting the rights of an accused. Its plain meaning should, therefore, be enforced and should not be disregarded simply on the ground of repetitious procedure where that will lead to the imposition upon the accused of a more burdensome penalty.

No complex crime where death of several people results from several shots

The case of *People v. Pineda*[100] reiterates the rule that where several persons are killed from separate shots, there is no complex crime. The shots in such a case are considered separate and distinct acts even if they sprang from the same criminal im-

[99] See People v. Cano, G.R. No. 19660, May 24, 1966.
[100] G.R. No. 26222, July 21, 1967.

pulse.[101] The fact that, in the *Pineda* case, there was no showing as to who fired the several shots resulting in the death of three children and the wounding of their mother did not warrant a deviation from the rule similar to the one made in *People v. Lawas*.[102] The Court made the distinction that in the *Lawas* case, there was no finding of conspiracy, which was found to exist in the present case. It was further pointed out by the Court that the test under the first portion of Article 48 is whether there is a "singularity of criminal act; singularity of criminal impulse is *not* written into the law."[103]

EXTINCTION OF CRIMINAL LIABILITY

Is Article 89 modified by the Civil Code?

Under Article 89, death is provided as one of the ways by which criminal liability is totally extinguished. Paragraph 1 of said article distinguishes between two kinds of criminal liability in so far as extinction is concerned: the personal, which in any case is totally extinguished by the death of the convict, and the pecuniary, which is "extinguished only when the death of the offender occurs before the final judgment."

The case of *Belamala v. Polinar*[104] called for the application of the article's provision regarding pecuniary liability. The particular question raised was whether, in view of said provision, the civil liability of one charged with physical injuries who dies before final judgment is thereby extinguished, such that any claim therefor against his estate would be barred. It was held in effect that Article 89 has been modified by the new Civil Code ("that became operative eighteen years after the Revised Penal Code"), under Article 33 of which a civil action, entirely separate and distinct from the criminal action, may be brought to recover damages on account of physical injuries. A claim so instituted, the Court said, does not contradict Article 108 of the Revised Penal Code, which imposes upon the heirs of the decedent offen-

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[101] People v. Remolino, G.R. No. 14008, September, 1960, 61 O.G. 31 (Jan., 1965); People v. Pardo, 79 Phil. 568 (1947); People v. Buyco, 80 Phil. 58 (1948).

[102] G.R. Nos. 7618-20, June 30, 1955.

[103] Emphasis the Court's. The Court has thus impliedly abandoned the test applied in People v. Acosta, 60 Phil. 158 (1934) and People v. De Leon, 49 Phil. 437 (1926) which was one of the tests applied in the *Lawas* case.

[104] G.R. No. 24098, November 18, 1967.

der the obligation to indemnify. Being limited to the value of the offender's estate, such obligation in the final analysis really becomes an obligation of such estate. It must be noted, however, that the reference to Article 108 of the Revised Penal Code is misplaced because said article refers to the liability of one whose guilt has already been established by final judgment, whereas Article 89 contemplates the pecuniary liability of one whose guilt has not been so established.

Allowance for good conduct

Article 97 of the Revised Penal Code fixes rates of time allowance for good conduct which shall be deducted from a prisoner's term of sentence. The determination of whether such allowance should be granted is vested by Article 99 in the Director of Prisons. This power has been held, in *People v. Tan*,[105] to be exclusively the Director's and may not be exercised by a provincial warden or anyone else.

Prescription of Crimes

Article 91 of the Revised Penal Code provides that "the period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him."

In cases triable by Courts of First Instance, suppose the complaint was filed for purposes of investigation in the municipal court before the expiration of the prescriptive period but the information was filed in the Court of First Instance only after the expiration of said period, what should be the basis for determining whether or not the crime has prescribed? Should it be the filing of the complaint in the municipal court for preliminary investigation or the filing of the information in the Court of First Instance?

Prior to 1967, two varying sets of precedent existed. One stated the rule to be that the filing of the complaint in the municipal court for preliminary investigation purposes interrupts the

[105] G.R. No. 21805, February 25, 1967.

running of the prescriptive period.[106] The other considered such filing as not affecting the running of the period, and laid down the doctrine that interruption of the period is effected only by the filing of the complaint or information in the court which can try the case.[107]

Recognizing the conflict, the Supreme Court, in *People v. Olarte,*[108] re-examined these two sets of rulings and declared, as the correct and better rule, that the filing of the complaint in the municipal court has the effect of staying the period of prescription, even if the filing be only for preliminary investigation and said court is without jurisdiction to try the case. Four reasons were advanced by the Court for choosing this rule: *first,* Article 91 does not make a distinction as to whether the purpose of filing the complaint is merely for preliminary investigation or for trial on the merits; *second,* the municipal court's action, though merely investigatory in character already represents the initial step of the proceedings against the offender; *third,* it would be unjust to subject the right of an offended party to vindicate himself to delays that are not under his control; and *fourth,* even a preliminary investigation may result in the termination of the proceedings, as when the municipal court finds that there is no *prima facie* case against the accused.

As to whether the doctrine thus adopted by the Court would apply to accusations or complaints filed with city or provincial fiscals is not clear from the decision, which makes reference only

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[106] People v. Aquino, 68 Phil. 588 (1939); People v. Uba, G.R. No. 13106, October 16, 1959, 57 O.G. 8458 (Nov., 1961); People v. Olarte, G.R. No. 13027, June 30, 1960, 58 O.G. 1517 (Feb., 1962). The same ruling obtained under the old Penal Code, the corresponding article of which provided that:

"This prescription shall be interrupted from the commencement of the proceedings against the offender, and the term of prescription shall commence to run again when such proceedings terminate without the accused being convicted, or the proceedings are suspended by reason of some cause other than the default of the defendant."

It was held under this provisions that the filing of a complaint, and preliminary investigation, in the justice of the peace court interrupted the running of the period of prescription. Surbano v. Gloria, 51 Phil. 415 (1928); U.S. v. Lazada, 9 Phil. 509 (1908); People v. Joson, 46 Phil. 380 (1924). Even a preliminary investigation conducted by a municipal president (mayor) in the absence of the justice of the peace was held to have the same effect, for said investigation was considered to be in the nature of a judicial proceeding. People v. Parao, 52 Phil. 712 (1929).

[107] People v. Tayco, 73 Phil. 509 (1941); Amansec v. Guzman, 93 Phil. 933 (1953), citing, strangely, People v. Aquino, 68 Phil. 588 (1939) and Surbano v. Gloria, *supra,* see note 106; People v. Rosario, G.R. No. 15140, December 29, 1960; People v. Coquia, G.R. No. 16456, June 29, 1963.

[108] People v. Olarte, G.R. No. 22465, February 28, 1967.

to municipal courts. Doubt in this respect is engendered by the fact that in the decision rendered in the same case on June 30, 1960, the Court made the distinction that the accusation in the *Tayco* case[109] was not lodged with a *court.*

It is, however, submitted that the present ruling of the Court should be extended to complaints filed with fiscals since the reasons advanced in support of the ruling apply with equal force to proceedings conducted by them. Fiscals are empowered, like municipal judges, to conduct preliminary investigations and may even reverse actions of municipal judges with respect to charges triable by Courts of First Instance. They may also dismiss, and thus terminate, any criminal proceeding initiated before them.

CIVIL LIABILITY

Civil liability arising from criminal negligence cannot be enforced twice by varying the cause of action

In *Tactaquin v. Palileo,*[110] the plaintiff sought in a civil action to recover damages in the total sum of ₱37,686.35 for her daughter's death and for serious physical injuries inflicted on her as a result of the defendant's reckless driving. Defendant moved to dismiss on the ground that plaintiff had previously been awarded ₱4,000 as damages in a criminal action wherein he was found guilty of the same act charged in the civil complaint; hence said complaint was barred by prior judgment. Plaintiff contended that her complaint was not based on the same criminal case but on a tortious or quasi-delictual act which, under Article 2177 of the Civil Code, "is entirely separate and distinct from the civil liability from negligence under the penal code." Plaintiff's contention was held without merit. The Supreme Court stated that the very same article relied upon by the plaintiff provides that damages cannot be recovered "twice for the same act or omission of the defendant." The Court emphasized that any civil liability incurred by the defendant "—whether based on quasi-delict or otherwise — arose from exactly the same act or omission, namely, his reckless manner of driving which resulted in serious physical injuries (to her) and in the death of her daughter."

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[109] *Supra,* note 107.
[110] G.R. No. 20865, September 29, 1967.

Civil liability under the Penal Code distinguished from civil liability for taxes

Does acquittal in a criminal case involving non-payment of income taxes bar a civil action to enforce payment of said taxes?

This question was raised in the case of *Republic v. Patanao*.[111] In ruling on the matter, the Court distinguished civil liability under the Penal Code from civil liability to pay taxes. Under the Penal Code, civil liability stems from a criminal act or from criminal liability, with the consequence that if criminal liability is not imposed, there can likewise be no civil liability.[112] On the other hand, civil liability to pay taxes arises not from the commission of any criminal act, but from legal causes. It is incurred because, for instance, a person had engaged himself in business. Furthermore, the Tax Code, in penalizing refusal or failure to pay income tax or to make a return thereof does not provide for the collection of said tax in a criminal proceeding. The civil liability for payment of said tax, therefore, cannot be deemed included in a criminal action based on its non-payment, for which reason acquittal in the criminal case does not carry with it exoneration from the civil liability to pay the tax.

SPECIFIC CRIME UNDER THE CODE

A. Crimes Against Public Order

1. *Rebellion*

The settled doctrine is that murder or any other crime committed in the course or in furtherance of a rebellion is absorbed and forms part of the crime of rebellion, and as such may neither be prosecuted separately therefrom nor complexed therewith.[113] This doctrine was relied upon by the appellant in *People v. Buco*[114] to support his defense of double jeopardy. He claimed that the murder with which he was charged was but a part of the crime of rebellion for which he had been previously convicted. Appellant's claim was rejected, first, because the murder charge was not among the acts alleged in the rebellion case for the obvious

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111 G.R. No. 22356, July 21, 1967.

112 Art. 29 of the Civil Code excepts the case where acquittal is based on a reasonable doubt.

113 People v. Egual, G.R. Nos. 13469, 14240, and 14209, May 27, 1965; People v. Hernandez, *supra*, note 9; People v. Geronimo, 100 Phil. 90 (1956); People v. Romagosa, 103 Phil. 20 (1958); People v. Yuzon, 101 Phil. 871 (1957).

114 *Supra*, note 8.

reason that the murder was committed after the filing of said case; second, the murder was committed not for a political, but for a private motive. The victim, who was a mayor, was ordered killed not because of his position or the functions of his office. Rather, the killing was prompted by the information of a civilian privately interested in the 90-hectare land administered by the victim that the latter "was not good when it comes to the land."

2. *Direct assault*

It is an established requirement that to be convicted of the crime of direct assault penalized under Article 148, the accused must have known at the time of the commission of the act that the offended party is a person in authority or an agent thereof.[115] But the knowledge required is only as to the position occupied by the offended party and not as to what persons are considered by law as persons in authority or their agents. Thus, if, as in *People v Balbar,*[116] the accused knew the complainant to be a school teacher and he assaulted her while in her classroom performing her duties, knowledge on his part that the complainant, *as a school teacher,* was a person in authority need not be alleged as the same is immaterial for conviction. The law, in Article 152 of the Revised Penal Code, defines and enumerates who are persons in authority and among those included are school teachers. This is a matter of law which accused was presumed to know, his ignorance whereof would not exculpate him.

3. *Resistance or serious disobedience to a person in authority*

Two essential elements of direct assault are likewise indispensable in the crime of resistance or serious disobedience to a person in authority or an agent of such person. These are (1) that the accused knew that the offended party was such a person or agent and (2) that he was fully aware that such person or agent was actually engaged in the performance of his duties. These requisites, according to the case of *Vytiaco v. Court of Appeals,*[117] must be established beyond reasonable doubt to warrant a conviction for the crime of resistance or serious disobedience punished in Article 151 of the Code. What the article punishes, it was emphasized in said case, "is not the resistance or disobe-

[115] People v. Alvear, 35 Phil. 626 (1916); People v. Rellin, 77 Phil. 1038 (1947).

[116] G.R. Nos. 20216-17, November 29, 1967.

[117] *Supra,* note 38.

dience against a person in authority or an agent of such person in his capacity as a private individual but in his official capacity as an authority under the law, or as agent of the law, while engaged in the performance of his official duties."

B. Crimes Against Personal Liberty and Security

Serious illegal detention with murder

While Lucila Castro was walking home from the place where she worked as seamstress, the appellant in *People v. Reyes*,[118] a suitor, approached her and, with the use of force and violence, dragged her into his house nearby despite Lucila's entreaties that he release her and her resistance and cries for help. Inside his house, the door of which he closed, appellant stabbed the screaming Lucila, as a result of which she died. What crime did appellant commit? *Held*: Since Lucila was deprived of her liberty and she was detained for sometime before she was stabbed by appellant, the crime committed was serious illegal detention with murder.

C. Crimes Against Property

1. *Robbery in band*

The ruling enunciated in *People v. Valeriano*,[119] that the penalty for the crime of robbery in band with homicide shall be death, even without the concurrence of any aggravating circumstance, was reiterated in *People v. Halasan*.[120] It is, of course, understood that, as indicated in the *Halasan* case, where there are mitigating circumstances, the penalty may be lowered.

2. *Estafa*

One of the major events in criminal law in 1967 was the passage of Republic Act No. 4885, which amends paragraph (d) of subdivision 2, Article 315 of the Revised Penal Code. This amendatory law seeks to curb the rampant practice of issuing checks by persons who either have no bank deposits or do not have sufficient funds for the amounts of such checks. Such practice has resulted in the defraudation of many an innocent payee or indorsee. It has not only disturbed banking and other

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[118] *Supra*, note 59.
[119] 90 Phil. 15 (1951).
[120] *Supra*, note 47.

commercial transactions, but has also threatened to impair the public faith in the usefulness of checks in facilitating such transactions.

The loophole in the old provision which made possible this mischievous practice was the requirement that, in order that a drawer may be convicted thereunder, he must have issued the check with knowledge that he had no funds in the bank or that his funds therein were not sufficient to cover the amount of the check.[121] With this requirement, the drawer could easily claim, and it was difficult to disprove, that he did not have such knowledge.

The amendatory Act seeks to plug this loophole by establishing a *prima facie* presumption of deceit amounting to a false pretense or fraudulent act where a check is issued in payment of an obligation when the drawer had no funds in the bank or his funds therein were insufficient to cover the check and the drawer fails to deposit the amount necessary to cover such check "within three days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds." Under this amendment, the drawer, even if he acted in good faith when he issued the checks, would still be presumed *prima facie* to have acted fraudulently or through false pretenses if he fails to make the necessary deposit within the required period. Through this device, persons with checking accounts would be encouraged to take the precaution of first checking whether they have sufficient deposits before issuing checks.

Two other amendments introduced by Republic Act 4885, though of minor importance, deserve notice. One is the substitution of "a" for "such" in the old provision's "By postdating a check, or issuing *such* check..." Unamended, paragraph (d), Section 2 of Article 315 read as if it referred only to postdated checks. But jurisprudence held that the word "such" was an error in translation and that the paragraph envisioned the issuance not only of postdated checks but that of any check as well.[122] The embodiment of this holding in the text of the paragraph is certainly a step forward because it clarifies the provision for those who are unaware of the jurisprudence on the matter.

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[121] 2 AQUINO, *op. cit. supra*, note 44 at 1509-1510.
[122] People v. Fernandez, 59 Phil. 615 (1934).

Another amendment is the deletion of the phrase "and without informing the payee of such circumstances" — i.e., of the fact that the drawer has no funds in the bank or that the funds deposited by him are not sufficient to cover the amount of the check. This amendment might be taken to have effected a substantial change. But, correctly interpreted, the amendment should be taken as doing away with a surplusage instead of removing an element of the act proscribed by the paragraph. As noted in the *Fernandez* case,[123] Act No. 3313, which was superseded by the Revised Penal Code, did not use the expression "without informing the payee of such circumstances" but the meaning conveyed thereby was really incorporated in the substance of said Act. With or without the phrase, if the issuance of a check is accompanied by a revelation of the fact that the drawer does not have any or has no sufficient funds to cover it, there is no estafa.

D. Crimes Against Chastity

Acts of lasciviousness

To constitute the crime of acts of lasciviousness, an act or combination of acts must be motivated by lust or lewd designs.[124] No fixed or definite rule exists by which to determine whether a certain conduct is so motivated. Each case must be decided by taking into consideration the nature of the acts committed and the particular circumstances surrounding them.[125]

In the *Balbar* case, the charge that the accused embraced and kissed the complainant was held as insufficient basis for establishing the commission of acts of lasciviousness. The reason is that the manner, time and place under which the acts complained of were done — while the complainant, a school teacher, was conducting her class and within hearing distance of her co-teachers — did not permit a finding that said acts were attended by lewd designs.

E. Crimes Against Honor

Grave oral defamation

Article 358 provides for, and penalizes in varying degrees, two kinds of slander or oral defamation: grave and slight.

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123 *Supra*, note 122.
124 People v. Buenafe, 99 Phil. 306 (1956).
125 People v. Balbar, *supra*, note 116.

While the article does not so state, grave slander is judicially taken to be one which is "of a serious and insulting nature" and slight slander is one which does not possess that character. There is no hard and fast rule, of course, for determining whether an utterance belongs to one or the other category. But the rule has been laid down that, in making such determination, account must be made not only of the grammatical sense of the words uttered, taken separately, but as well of the particular circumstances of the case, the antecedent events which happened, as well as the relationship, between the offender and the offended party, for these facts contribute in showing the intent of the offender when he made the slanderous utterance.[126] In *People v. Cortez*,[127] the following remarks were found to be patently of a serious and insulting nature and, therefore, warranted a conviction for grave slander: "Matanda kang walang hiya, anak mo na lamang nagpapaasawa ka pa, kaya ikaw ay hiniwalayan ng asawa mo dahil sa gawain mo, ang sabi ng asawa ko ay nagpapaasawa ka sa kanya, iyon pumunta ka roon sa Kalunya mo."

CRIMINAL NEGLIGENCE

Emergency rule

The general rule is that a driver will not be held liable simply because he failed to take the wisest choice in a sudden emergency. This rule does not apply, however, where the emergency is of the driver's own creation or devising, as when he was driving at an excessive or unreasonable rate of speed, taking into account the place and other circumstances. In such case, as held in *Addenbrook v. People*[128] it is not a defense that the accident could not be avoided because of the closeness of the victim to the truck when he suddenly darted across the street.

CRIMES UNDER SPECIAL LAWS

1. *Illegal possession of firearms*

Section 879 of the Revised Administrative Code excludes from the coverage of Section 878 of said Code, making it unlawful to possess firearms without a license duly issued, certain offi-

[126] Balite v. People, G.R. No. 21475, September 30, 1966.
[127] G.R. No. 23508, December 11, 1967.
[128] G.R. No. 22995, June 29, 1967.

cials and public servants in possession of such firearms for use in the performance of their official duties. The issue in *People v. Mapa*[129] was whether or not a duly appointed and qualified secret agent of a provincial governor is included in the exemption. It was held that he is not, since no mention is made in the provision of secret agents. This holding, according to the Court, supersedes that made in *People v. Macarandang*[130] to the extent that there is a conflict between the two rulings.

2. *Illegal possession of silver or nickel coins*

In the case of *People v. Ocampo,*[131] the accused was apprehended with three bags of coins in her possession in the total amount of ₱1,120.00. She was admittedly engaged in buying and selling coins, by which she would gain a percentage, and the coins found in her possession were intended for sale. Prosecuted and convicted under Republic Act No. 427, which makes it unlawful "to hold, possess or keep silver and/or nickel coins in an aggregate amount exceeding fifty pesos," she appealed contending, among others, that what the Act punishes is *accumulation*. The Suppreme Court affirmed her conviction, stating that the practice she was engaged in is an evil sought to be prevented by the statute, its consequence being the withdrawal of said coins from circulation, "by systematic, deliberate and excessive accumulation thereof, resulting in adverse effects on the economy."

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[129] G.R. No. 22301, August 30, 1967.
[130] G.R. No. 12088, December 23, 1959.
[131] G.R. No. 24109, August 10, 1967.